

Striking Balance: Social Assistance Policy, the Public Trust, and the Public Service

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Abstract: This article argues that while the provision of social assistance is an accepted reality in Canada it is supported by a multiplicity of contrary arguments in the context of scarce resources. As such, it must be the prerogative of elected leaders to balance the direction and resourcing of its provision with competing policy goals. However, this does not imply a political *carte blanche* with regard to policy development. In addition to any judicial check on policy-making, public servants have an obligation to ensure that the elected decision-makers are adequately informed about the rights issues involved as well as the various policy options available. Moreover, public servants must ensure that all normative and potentially rights abrogating decisions are made openly, transparently and subject to the scrutiny of a public that has the tools and means to understand and analyse information and to express itself accordingly in the political arena.

The provision of social assistance is an accepted reality in Canada. It is a social norm supported by a multiplicity of often contrary arguments premised on diverse conceptions of economics, the nature of humanity and the legitimacy of the state. As such, the appropriate manner and form of social assistance policy¹ and programs is subject to ongoing debate and contention. Accepting the impossibility of a truly rational approach to the policy process on the basis of resource, time and cognitive limitations, we are left with what Charles Lindblom termed “the science of muddling through” (1959) when it comes to the policy process. This is especially true in light of the contemporary demand that public servants and political actors alike do more with less.

This situation magnifies a two-fold potential for problems. First, in terms of striking a balance between responsiveness and impartiality, the practical necessity of interpreting beliefs and ideological implications when developing policy creates the potential for the civil service to become an organization of glorified “yes men” who simply reinforce their political masters’ existing values and beliefs. This is a situation that would constitute a disservice to the public interest, elected officials, and public servants themselves by, *inter alia*, eroding trust in government and its actions. Conversely, to continually devote resources to the exploration of policy options with, at best, a minimal likelihood of adoption draws resources away from the careful analysis of more politically viable options, a task that would, in the aggregated short-term at least, result in the increased efficacy and efficiency of policy decisions.

Secondly, from an organizational perspective, the continued research, development and analysis of options that are either incessantly marginalized or that represent an excessively narrowed scope of analysis does not result in a reasonably in-depth review of available options. This cannot help but negatively affect the morale and undermine the confidence of public administrators trying to fulfil these tasks as well as disengage elected leaders from the civil service, their primary means of affecting governance.

Public servants are duty-bound to loyally uphold the public interest. While this duty is by and large fulfilled through the faithful execution of ministerial direction, it is not exclusively so. For example, in determining social assistance policy and designing appropriate programs, it is the role of the public service to assist in the policy process as directed by elected officials and to ensure that the process is transparent and respectful of individual and group rights: this defines the constitutional parameters of legitimate government action. However, it is also clear that policy development is inherently complex. It is, to a significant degree, a subjective exercise. Moreover, the contemporary drive for democratic participation, and stakeholder consultation in particular, adds a layer of complexity and tensions that public administrators must appropriately balance in order to fulfil their responsibilities. In short, public administrators and policy analysts are faced with situations that do not have objectively “right” answers.

Democratic Legitimacy

Individuals are shaped both by their “nature” and by their environment; both physiological and socioeconomic factors determine who we are. The relative weighting of these factors is a matter of significant and varied debate, but for present purposes it will suffice that we accept this tenet. We can then infer that, when considering the issue of poverty and inequality, not only must we consider the existence of disparities in quality of life and income but also the context in which those differences have come to exist. Furthermore, with respect to the reality of limitations on scope and incrementalism in policy change, it is clear that both how issues are framed and defined and who frames them is of primary importance to the legitimacy and appropriateness of policy decisions in the context of advancing the public good and maintaining a democratic polity. If systemic disadvantage is perpetuated or exacerbated by policy choices, then either the interests of those groups and individuals are underrepresented (or not represented at all) or, are represented in a paternalistic manner incongruent with their desires. This, in turn, marginalizes their long-term agency-building capacities and is certainly incompatible with the idea of democratic expression.

While consensus is neither present nor likely, most conceptions of democratic legitimacy include the substantive ability as necessary conditions of all citizens to access and comprehend accurate information regarding the ordering of the state and the issues it faces, to contemplate possible choices and their potential outcomes, and to meaningfully express their preferred option(s) and engage in good-faith debate in pursuit of an appropriate course of action (Kymlicka and Norman 1994; Pateman 2004; Sen 1987; United Nations 1948).² These capacities do not emerge naturally but require various processes involving educational, social, and personal resources (Christman 2005).³ In short, democratic legitimacy demands real individual autonomy, and this requires certain material conditions.

Social assistance policy can therefore affect the legitimacy of government on the whole. Policy issues that concern material well-being (for example, access to shelter, food, medical care or education) have an impact on the ability of those affected by those policy choices to exercise their individual or group agency in the form of democratic expression, thereby creating potential legitimacy deficits, in turn weakening the validity of the state’s authority.

The Westminster Model

The Canadian state is organized along the principles of the Westminster model of government (The Constitution Act, 1867 [U.K.], 30 & 31 Victoria, c. 3). This model is a form of responsible government, implying both democratic representation and a responsiveness on the part of elected officials, and the government as a whole, to the demands of the polity (Commonwealth Secretariat 2003; Savoie 2003). In this regard, there are three sets of key actors: the executive-legislative, the judiciary, and the civil service. The responsibility of the executive-legislative is to operate within the parameters of these principles and the law to further the public interest in the manner they deem most appropriate, with their judgment and ability subject to periodic review via general elections. It is the function of the judiciary to interpret and apply the laws of the land, in reference to the four core principles of Canada – democracy, federalism, constitutionalism and the rule of law, and respect for minorities (*Reference Re: Secession of Quebec* [1998] 2 S.C.R. 217) – as well as the Constitution and pass judgment on disputes that may arise regarding jurisdiction, rights or obligations. Thirdly, it is the role of the public service to assist the executive and legislative in the development of policy and to faithfully implement those policies within the bounds of the law (Aucoin 1995; Kernaghan and Langford 1990). This synopsis, though not fully representative of the nuance and scope of these responsibilities, provides a starting point from which to investigate the public service's role with regard to the development of social assistance policy.

The Role and Loyalty of the Civil Service

Especially with regard to the civil service, ministerial responsibility is a vital component of responsible government (Canada, Privy Council Office 1990; Canadian Study of Parliament Group 1989; Savoie 2003). Simply put, this concept dictates that ministry officials are responsible to the electorate, via the legislature, both individually and collectively, for the actions of the government (Smith 1998). Under the Westminster model, this accountability has two key implications. First, accountability depends on the existence of a professional, merit-based bureaucracy that facilitates the anonymity of public servants, keeping them from the public light. This allows public servants to provide unbiased advice to elected officials, the decision-makers – to “speak truth to power” (Savoie 2003) – and thereby to assist elected officials in the administration of the machinery of the state (Aucoin 1995). Secondly, accountability depends on the neutrality of those public servants, made possible by the dichotomization of the political and the administrative (Overeem 2005).

Unlike the private sector, where the maximization of profit is the primary metric of success, the public sector's mandate is effective stewardship of the long-term public interest. This task requires policy capacity, institutional memory and the ability to speak truth to power. While these conditions may not ensure good government, good government cannot exist without them, at least in the Canadian context (Aucoin 1995). In order to serve successive governments with neutrality, public servants must maintain both the appearance and reality of impartiality. To accomplish this, they must be allowed some degree of autonomy in the determination of their organizational structure and policy capacities. These semi-autonomous responsibilities should, of course, be governed by

reason and experience, by reliance on institutional knowledge, reference to extra-jurisdictional best practices, and alignment with broadly held social values. Furthermore, this independence must also allow for responsiveness to direction from the government of the day.

Almost exclusively, the civil service must act according to the wishes of elected officials; indeed, it is argued that this is the dominant guiding principle of a professional bureaucracy in a Westminster government (Canada, Task Force on Public Service Values and Ethics 2000). However, both the courts and academic literature assert that the public service bears the responsibility of faithful implementation only insofar as the public interest is served (see, for example, *Chopra v. Canada* [2005] F.C.J. no. 1189; Sossin 2005). In this vein, the Supreme Court of Canada explicitly recognized, in *Fraser v. P.S.S.R.B.* ([1985] 2 S.C.R. 455), that “the public interest in both the actual and apparent impartiality of the public service dictates a general requirement of loyalty on the part of the public servant to the Government of Canada, as opposed to the political party in power.” Furthermore, “the notion of the public interest is a touchstone of motivation for public servants. It is for the public service what justice and liberty are for the legal profession, or what healing and mercy are for the medical profession” (Canada, Task Force on Public Service Values and Ethics 2000: 17).

A more nuanced definition of the relationship between elected leaders and policy professionals is that the public servant owes a duty of loyalty to the public interest and that the government of the day is empowered with the ability to determine what public interest is, so long as it does not require illegal action or unjustifiably violate the constitutional rights of one or more citizens or groups. Public servants, then, are duty-bound to be responsive to the demands of elected officials but they must also act in the public interest. Thus, the responsible public servant has a dual loyalty: to the government of the day and to the broader public interest. It is from this duality that we derive the idea of public servants as “stewards of the long-term” (personal communication) discussed further below.

Shared Values and Competing Rights

At a practical level, attempting to maintain a democratic polity is, to some extent at least, an exercise in normative judgment (Hirschl 2004). In his study of citizen engagement processes, Eric Montpetit finds that some degree of shared “life world” or belief is a necessary component for meaningful consultation and engagement with citizens (Montpetit 2003; see also, Habermas 1990). At some level, a set of mutually agreed upon values must exist to serve as the foundation of law and bind together the elements of a society.

The shared rights and values in a democratic society, however, are not predicated on a unitary value and belief system. Rather, the balancing of competing rights and values is the hallmark of liberal democracy. This has been explicitly identified by the Supreme Court of Canada in, *inter alia*, *O.P.S.E.U. v. Ontario* ([1987] 1 S.C.R. 2) wherein it judged that “no single value ... no matter how exalted, can bear the full burden of upholding a democratic system of government and some underlying and important values might even be in conflict.” To address this, the judiciary must strike an appropriate balance between competing rights and thereby establish a broad framework and policy space in which elected leaders may legitimately govern. That said, the scope of judicial

review has drastically expanded in recent years and, to put it mildly, “much debate” the narrowing or elimination of policy space in deference to rights-based claims and concomitant obligations and liabilities imposed on the state (Hirschl 2004).

Especially since the patriation of the Charter of Rights and Freedoms, the judiciary has become a key factor in shaping the landscape of governance in Ontario, and of Canada as a whole. For example, the *Reference Re: Same-Sex Marriage Reference* ([2004] 3 S.C.R. 698) and *Newfoundland (Treasury Board) v. N.A.P.E.* ([2004] 3 S.C.R. 381), as well as *O.P.S.E.U. v. Ontario*, *Fraser v. P.S.S.R.B.*, and *Chopra v. Canada*, have all played important parts in shaping the political, social and economic framework of the province and the country, as well as the role, rights and perception of its public servants.

In some respects, the expansion of judicial review reflects an increasing incidence of a problematic element of partisan politics. The short mandate of governments relative to the length of time necessary to effect substantive change in complex societal issues is at the root of this problem. On the one hand, partisan political actors are limited in their ability to impose wholesale changes not supported by the polity by relatively short mandates – the actions of the government of the day are subject to review via popular election every five years or so. On the other hand, the reality of imperfect information due to the combined limitations of media representation, opposition rhetoric, and cognitive limitations in conjunction with the subtle and complex nature of many policy issues would seem to incline the government of the day to focus on short-term gains in order to score political points. Garnering electoral victories at the expense of more deep-rooted, less visible, or more contentious issues, especially when the government can shift those issues into the realm of the courts (Hirschl 2004) is a problem that has been described as the immediate chasing out the important (Canada, Task Force on Public Service Values and Ethics 2000). This is arguably an abdication of responsibility on the part of elected officials, albeit one that they are incited towards by circumstance (Hirschl 2004). However, it must be remembered that a key advantage of parliamentary democracy is supposed to be that it is “an inherently evolutionary form of government, continually adapting to meet new circumstances” (Canada, Task Force on Public Service Values and Ethics 2000).

In the context of increasing pressures on elected officials to concern themselves primarily with shorter-term issues, the idea of public servants as the “stewards of the long term” is justified by their loyalty to the public interest – a trust that surely includes the long-term and the sustainable economic, social and political viability of the polity – as well as to elected officials. This is not to argue that direct contravention of political directives might be justified, but the aforementioned degree of independence from the ruling party is highly relevant because of these circumstances. In the name of the public interest it is within the mandate of the civil service to ensure that resources are devoted to the consideration of alternative options and to the investigation of longer-term ramifications and to make sure that the results of these exercises are made known to political staff and elected officials. Not only must civil servants speak truth to power but they must be able to do so in an informed and professional manner, conscious both of the needs of the ruling party and of the polity in the longer term. And, in the absence of the ruling party’s consideration of these issues, public servants bear the responsibility to call attention to this omission.

Ethical Values and Stewardship

The idea that the public service must be guided by values is one that is in good currency and has been broadly endorsed and embraced organization-wide in both provincial and federal contexts (see, for example, Canada, Task Force on Public Service Values and Ethics 2000; Canada, Treasury Board Secretariat 2003; Kernaghan 2003, 2007; Ontario, Ministry of Finance 2004). The idea is supported by a general theory that runs more or less along the following lines: in order to be responsive to political directives, public servants must apply rules that ought to be interpreted and considered with regard to context and the dictates of related, possibly conflicting, sets of rules and directives. Public servants must therefore make judgments, and these judgments are best made in a culture in which values act as guiding principles, engendering respect for the primacy of law, constitutionalism, and due process (Canada, Task Force on Public Service Values and Ethics 2000). In applying guiding values and exercising ethical judgment, public servants are manifestly the stewards of the public interest.

Value statements help public servants manage competing interests as they carry out their duties. For example, the mission statement of the Ontario Public Service (OPS) is “to serve the public interest and uphold the public’s trust.” The following tenets are of a particular importance: “[W]e [the public service] carry out the decisions and policies of the elected government,” and “the public is entitled to expect the highest standards of conduct from all individuals who work for the OPS. This means that public servants need to be sure that government activities are conducted in an open, fair, and transparent manner” (see the full OPS mission statement at <http://www.gojobs.gov.on.ca/RoleOfThePublicService.asp>). These prescriptions are ideals. In many instances, it is sure to be neither the decision of the governing party nor an advisable political move to disclose all available information as it becomes available. If they are to be truly responsive to their political masters, public servants must expect this and will assist elected officials in the management of information. At the same time, public servants must also ensure that information is not unduly withheld or released in a manner that intentionally misrepresents facts. In this regard, public servants must balance the right of the public to know with the right of the government to govern as it sees fit.

Applying Ideals

Balancing Rights

Accepting that public servants are legitimate stewards of the public interest in the long-term, it is necessary to view social assistance programs as requirements of democratic legitimacy – education, shelter, health care and nutrition are surely necessary components for the development of the basic capacities needed for participation in democratic life. However, policy is an incremental process, and absolute imperatives with regard to policies that impose positive obligations on the state are problematic in terms of the ability of the state to bear implementation costs. In order to address this, we must accept that rights can be, at least temporarily, abrogated in the interests of sustaining the state’s solvency. The state is subject to multiple competing demands for the assurance and provision of rights; if it is forced to immediately implement corrective remedies, the resources required to do so must, necessarily, be drawn from other programs that also contribute to the promotion and provision of rights.

The justification for such abrogation of rights is illustrated in the Supreme Court's decision in *Newfoundland (Treasury Board) v. N.A.P.E.*, a case revolving around the issue of pay equity for female workers in Newfoundland's hospital sector. The provincial government had signed a pay-equity agreement that prescribed a series of pay increases over a period of five years to bring the pay of female workers up to the level of male workers in comparable positions. However, on the grounds of an unexpected shortfall of government revenues, Newfoundland delayed the commencement of these increases and made no provision for retroactive compensation. As a result, female workers sued for the commencement of the pay-equity adjustments in accordance with the agreement, arguing that Newfoundland's action constituted an abrogation of equality rights and was therefore unconstitutional.

The Supreme Court agreed with the workers that the government's actions violated Section 15 of the Charter (equality rights) but held that the action was justified under Section 1 (reasonable limitations) because the province's financial crisis was a sufficiently important objective for the limitation of equality rights (Hogg 2006). In his decision, Binnie, J. stated that it was not appropriate to analyse the situation as a matter of "rights versus dollars" but rather to see it as a matter of "rights versus hospital beds, rights versus layoffs, rights versus education and rights versus social welfare" (Section 35.9[f]). While the court ruled that the state may not arbitrarily abrogate rights on the basis of "fiscal restraint" or similar arguments, it ruled that governments must be given leeway to determine the appropriate allocation of available resources in the substantive provision of rights while also maintaining the public interest.

Maintaining Democratic Legitimacy

The quality of an individual's life, as measured by health, education, material sustenance as well as access to information about issues relating to the organization of the state, the leisure requisite for contemplation, and the ability to meaningfully express preferred choices and engage in substantive debate about those issues fundamentally affect the legitimacy of the state itself. Thus, the civil servant's awareness of systemic exclusion and of methods by which to mitigate it is also of key import to the execution of his or her duties. Nonetheless, while a minimum standard of living may be a right, it is not – as with all rights – an absolute. It can be abrogated by policy decision, albeit one that is subject to judicial review.

Elected government must be given the freedom to promote its overarching mandate to protect and further the public interest in the manner in which it sees fit. This, however, must be done in conjunction with the public service's responsibility to make elected officials aware of rights issues, their effects, and, in extreme instances, to bring issues to the attention of officers of the legislature or even, on the rarest occasions, directly to the public. Indeed, to sustain a "values culture," public servants must have avenues through which they can express concern about actions that are seen as potentially illegal, unethical or inconsistent with public-service values (Canada, Task Force on Public Service Values and Ethics 2000). While it may be difficult to determine whether public servants have a duty to publicly disclose, it may certainly be inferred that they have a duty to confidentially speak truth to power regarding instances of systemic exclusion and provide, to the best of their abilities, options for remedying these conditions.

Maintaining Responsiveness and Independence

As stewards of long-term societal interests –including the maintenance of democratic legitimacy – and as responsive servants of political masters public servants have dual, though possibly conflicting, organizational roles. For example, in the situation of a government with clear ideological preferences, the temptation to conduct analytical research along those lines is surely a great one and an over-adherence to the precept of the responsive civil service may lead one in that direction. Analysing and developing policy options that public servants deem to be ideologically incongruent with the government of the day or that are perceived to be politically untenable is potentially problematic. It may limit the policy capacity of future governments, as well as misrepresenting – in the public forum – the continuum of policy options available in response to a particular issue in an ideologically skewed fashion.

Nonetheless, if the civil service is to maintain its impartiality and ability to serve successive governments – which, as discussed above, are necessary conditions of responsible government – a degree of independence is required. Independence entails the ability, at least to some degree, to maintain the critical mass of engaged employees necessary to maintain a professional, value-guided organization (Canadian Centre for Management Development 2000); to investigate and present issues affecting the public interest, policy options, and potential ramifications; and, to effectively manage down, as well as up, in order to effectively engage those employees as well as elected leaders and their political staff.

In Ontario, for example, the need to maintain responsiveness and independence is both implicitly and explicitly recognized in such legislation as the Fiscal Transparency and Accountability Act ([2004] S.O. 2004, c. 27) and the numerous requirements for the presentation of public accounts, budgets and various others reports and through the establishment of term-limited, arm's-length offices such as the Integrity Commissioner, Ombudsman, and Privacy Commissioner that act as watchdogs for the public interest. These offices, especially that of the Integrity Commissioner, are intended to provide means by which civil servants may voice their concerns regarding perceived wrongdoing or acts of omission in a way that does not violate their obligation to refrain from public criticism of the government of the day.

Conclusion

As stewards of the public interest a public service must seek to achieve three ends, in addition to being the responsive developer and the faithful implementer of policy: the illumination and analysis of rights and values; the maintenance of democratic legitimacy; and the continuation of an independent policy capacity and institutional memory. These ends can only be achieved by striking an appropriate balance between competing interests, rights and obligations and by applying prescribed and implicit values in reference to the contextual knowledge requisite for a professional, neutral administration. Political acumen must be utilized to serve and engage with the interests of the government of the day. Responsiveness to political direction remains key, however, the public interest, specifically with regard to openness and transparency, must also be served.

Policy changes are necessarily incremental. The manner and form of these changes are determined by theory and ideals, context and capacity, and by the reality of

fiscal limitations. Therefore, policy foci are necessarily guided by normative decisions based on the balancing of societal values and the maintenance of individual rights and abilities. These are decisions that, in representative democratic polities at least, must come overwhelmingly from democratically elected representatives and leaders. This does not mean that the concept of rights is any less relevant to the discussion, but, to a limited and reviewable extent at least, it must be the prerogative of elected leaders to abrogate rights in furtherance of policy goals. In order for them to fulfil their obligations, public servants must ensure that elected decision-makers are adequately informed about the rights issues involved and available policy options and that normative and abrogating decisions, to the highest possible degree, are made openly, transparently and subject to the scrutiny of a public that has the tools and means to understand and analyse information and to express itself accordingly in the political arena. These requirements necessarily include a predisposition towards a generous provision of social services, including education, health care, and income security.

Notes

- 1 For present purposes, *social assistance* is broadly defined as government transfers provided directly to, or for the direct benefit of, individuals in order to assist with the material and/or psychological requirements of a commodious existence – in short, government action directed at the development of individual's basic capabilities. .
- 2 While recognizing that this is a somewhat contentious claim, in referencing both international agreements and academic literature, I argue that as an ideal-type at least, this claim holds true.
- 3 It must, however, be recognized that this last condition is generally considered to be achieved through the election of representative individuals to legislatures and the proceeding attempts to draw the attention of those representatives, the governing and opposition parties, the news media, the judiciary, interest groups, and others to specific issues or viewpoints in an iterative and inter-connected manner that defies both simple and consensus definitions.

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